

AMENDED IN SENATE JUNE 20, 2002
AMENDED IN ASSEMBLY MAY 14, 2002
AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3029

Introduced by Assembly Member Steinberg

March 12, 2002

An act to amend Sections 1280 and 1281.6 of, and to add Sections 1281.89 and 1281.93 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 3029, as amended, Steinberg. Consumer arbitration agreements: private arbitration companies.

Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would define attorney for a party, consumer arbitration, consumer party, neutral arbitrator, and private arbitration company for these purposes. The bill would specify that if a consumer arbitration agreement, entered into or renewed on or after January 1, 2003, designates one or more specific arbitrators or private arbitration companies or incorporates the arbitration rules of a private arbitration company, the consumer party shall have the option, as specified, after a dispute arises, to choose a different arbitrator or private arbitration company, and the arbitration agreement shall plainly notify the consumer of this right, as specified, as well as the right to obtain

information about private arbitration companies, as specified. The bill would prohibit an arbitrator or private arbitration company from administering or otherwise participating in a consumer arbitration, unless the agreement complies with these requirements and the consumer chooses the arbitrator or private arbitration company after the dispute arises. The bill would also prohibit a private arbitration company from administering a consumer arbitration if, on or after January 1, 2003, it provides specified services or products to a party or attorney for a party to arbitration. The bill would specify the remedies for these violations.

The bill would also prohibit certain solicitations, as specified, regarding consumer arbitration cases, and prohibit a private arbitration company from making certain representations regarding consumer arbitration, adopting or enforcing specified rules governing consumer arbitration, or giving or receiving remuneration for referrals, as specified. *The bill would specify that it applies to all consumer arbitration proceedings subject to the provisions of the bill or conducted in California. The bill would also specify that the application of certain provisions of the bill to health care service plans shall become operative on January 1, 2004.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1280 of the Code of Civil Procedure is
- 2 amended to read:
- 3 1280. As used in this title:
- 4 (a) "Agreement" includes but is not limited to agreements
- 5 providing for valuations, appraisals and similar proceedings and
- 6 agreements between employers and employees or between their
- 7 respective representatives.
- 8 (b) "Attorney for a party" includes any attorney actually
- 9 representing a party and any attorney currently associated in the
- 10 practice of law with an attorney hired to represent a party.
- 11 (c) "Award" includes but is not limited to an award made
- 12 pursuant to an agreement not in writing.
- 13 (d) "Consumer arbitration" means an arbitration that is
- 14 binding on the consumer and conducted under a predispute



1 arbitration provision contained in a contract that meets both of the
2 following criteria:

3 (1) The contract is with a “consumer party.”

4 (2) The arbitration provision is contained in a printed form
5 agreement or was drafted by or on behalf of, or inserted by or on
6 behalf of, the nonconsumer party.

7 (e) “Consumer party” means a party to an arbitration
8 agreement who, for the purpose of that agreement, is any of the
9 following:

10 (1) An individual who seeks or acquires, including by
11 purchase, lease, or license, any goods or services primarily for
12 personal, family, or household purposes, including financial
13 services, insurance, and other goods and services, as defined in
14 Section 1761 of the Civil Code.

15 (2) An individual who is an enrollee, a subscriber, or an insured
16 under a health care service plan, within the meaning of Section
17 1345 of the Health and Safety Code, or a health care insurance
18 plan, within the meaning of Section 106 of the Insurance Code.

19 (3) An individual with a medical malpractice claim that is
20 subject to arbitration pursuant to a predispute arbitration
21 agreement.

22 (4) An employee or applicant for employment in a dispute
23 arising out of, or relating to, his or her employment or prospective
24 employment, except a dispute under or arising out of a collective
25 bargaining agreement between an employer and its employees or
26 between their respective representatives.

27 (f) “Controversy” means any question arising between parties
28 to an agreement whether ~~such~~ *the* question is one of law, of fact,
29 or both.

30 (g) “Neutral arbitrator” means an arbitrator who is selected or
31 appointed by one of the following methods:

32 (1) Jointly by the parties or by the arbitrators selected by the
33 parties.

34 (2) By the court when the parties or the arbitrators selected by
35 the parties fail to select an arbitrator who was to be selected jointly
36 by them.

37 (3) By a private arbitration company, under an agreement of the
38 parties or applicable rules.

39 (h) “Party to the arbitration” means a party to the arbitration
40 agreement:

1 (1) Who seeks to arbitrate a controversy pursuant to the
2 agreement;

3 (2) Against whom ~~such~~ *the* arbitration is sought pursuant to the
4 agreement; or

5 (3) Who is made a party to ~~such~~ *the* arbitration by order of the
6 neutral arbitrator upon ~~such~~ *the* party's application, upon the
7 application of any other party to the arbitration or upon the neutral
8 arbitrator's own determination.

9 (i) "Private arbitration company" means any
10 nongovernmental entity or individual that holds itself out as
11 managing, coordinating, or administering arbitrations, or
12 providing the services of neutral arbitrators, or making referrals or
13 appointments to, or providing lists of, neutral arbitrators. "Private
14 arbitration company" includes any entity owned, in whole or in
15 part, by any individual or affiliated with, a private arbitration
16 company, but does not include ~~entities or individuals that~~
17 ~~administer, make referrals or appointments to, or provide lists of~~
18 ~~arbitrators in, fewer than five consumer arbitration cases per year.~~
19 *individuals who self-administer cases in which they are appointed*
20 *to serve as the arbitrator, entities that administer, make referrals*
21 *or appointments to, or provide lists of arbitrators in, fewer than*
22 *five consumer arbitration cases per year, or any self-regulatory*
23 *organization (SRO) as defined in the Securities and Exchange Act*
24 *of 1934 (15 U.S.C. 78c(a)(26)).*

25 (j) "Written agreement" shall be deemed to include a written
26 agreement which has been extended or renewed by an oral or
27 implied agreement.

28 SEC. 2. Section 1281.6 of the Code of Civil Procedure is
29 amended to read:

30 1281.6. (a) Except as provided in subdivision (b), if the
31 arbitration agreement provides a method of appointing an
32 arbitrator, that method shall be followed.

33 (b) If a consumer arbitration agreement entered into or
34 renewed on or after January 1, 2003, designates one or more
35 ~~exclusive arbitrators or private arbitration companies, or~~
36 ~~incorporates the arbitration rules of a private arbitration company,~~
37 ~~the consumer party shall have the option, after a dispute arises, to~~
38 ~~choose a different arbitrator or private arbitration company, and~~
39 ~~the arbitration agreement shall plainly~~ *exclusive arbitrators,*
40 *private arbitration companies, or SROs, or incorporates the*

1 *arbitration rules of a private arbitration company or SRO, the*
2 *consumer party shall have the option, after a dispute arises, to*
3 *choose a different arbitrator, private arbitration company, or SRO,*
4 *as the case may be, and the arbitration agreement shall plainly*
5 *notify the consumer of this right, as well as of the right to obtain*
6 *information about private arbitration companies as provided by*
7 *Section 1281.96 in the arbitration clause. This notice shall also be*
8 *provided to the consumer party by the private arbitration company*
9 *in the first communication from the private arbitration company*
10 *to the consumer party regarding the arbitration, and in the rules of*
11 *procedure governing the arbitration. The option to choose a*
12 *different arbitrator or private arbitration company may be*
13 *exercised by the consumer party within 75 days from the date the*
14 ~~*nonconsumer party serves a demand for arbitration specifying an*~~
15 ~~*arbitrator or private arbitration company. No consumer*~~
16 ~~*party serves a demand for arbitration, the nonconsumer party*~~
17 ~~*serves a demand for arbitration specifying an arbitrator, private*~~
18 ~~*arbitration company, or SRO, or a court issues an order*~~
19 ~~*compelling arbitration. No consumer arbitration may be*~~
20 ~~*self-administered by a party. No arbitrator or private arbitration*~~
21 ~~*company may administer or otherwise participate in a consumer*~~
22 ~~*arbitration unless the arbitration agreement complies with this*~~
23 ~~*subdivision and the consumer chooses the arbitrator or private*~~
24 ~~*arbitration company after the dispute arises. Any arbitration award*~~
25 ~~*rendered in violation of this section shall be vacated pursuant to*~~
26 ~~*Section 1286.2.*~~ *arbitrator, private arbitration company, or SRO*
27 *after the dispute arises, or fails to timely exercise the option to*
28 *choose another arbitrator, private arbitration company, or SRO.*
29 *Any arbitration award rendered in violation of this section shall be*
30 *vacated at the request of the consumer party pursuant to Section*
31 *1286.2. This subdivision shall apply to all consumer arbitration*
32 *agreements subject to this article, and to all consumer arbitration*
33 *proceedings conducted in California.*

34 (c) If the arbitration agreement does not provide a method for
35 appointing an arbitrator, the parties to the agreement who seek
36 arbitration and against whom arbitration is sought may agree on
37 a method of appointing an arbitrator and that method shall be
38 followed.

39 (d) In the absence of an agreed method, or if the agreed method
40 fails or for any reason cannot be followed, or if an arbitrator

1 appointed fails to act and his or her successor has not been
2 appointed, the court, on petition of a party to the arbitration
3 agreement, shall appoint the arbitrator.

4 (e) If a petition is made to the court to appoint a neutral
5 arbitrator, the court shall nominate five persons from lists of
6 persons supplied jointly by the parties to the arbitration or obtained
7 from a governmental agency concerned with arbitration or a
8 private disinterested association concerned with arbitration. The
9 parties to the agreement who seek arbitration and against whom
10 arbitration is sought may within five days of receipt of notice of
11 the nominees from the court jointly select the arbitrator whether
12 or not the arbitrator is among the nominees. If the parties fail to
13 select an arbitrator within the five-day period, the court shall
14 appoint the arbitrator from the nominees.

15 SEC. 3. Section 1281.89 is added to the Code of Civil
16 Procedure, to read:

17 1281.89. (a) A solicitation regarding ~~a~~ *an existing or future*
18 consumer arbitration case may not be made by or on behalf of a
19 private arbitration company to any party, prospective party, or
20 attorney for a party or prospective party, unless the solicitation is
21 protected from abridgment by the Constitution of the United States
22 or by the Constitution of the State of California.

23 (b) For the purpose of this section, solicitation includes an oral
24 ~~or written request for arbitration business or any other~~
25 ~~communication concerning the availability for arbitration~~
26 ~~business in which a significant motive is pecuniary gain. or written~~
27 *request for arbitration business. Nothing in this section prohibits*
28 *a private arbitration company from indicating a general*
29 *willingness to serve as a private arbitration company.*

30 (c) A private arbitration company may not make any
31 representation regarding consumer arbitration that promises or
32 implies specific results or favoritism towards one party or
33 prospective party or one type of disputant or industry.

34 (d) A private arbitration company may not adopt or enforce any
35 rule governing consumer arbitration that is inconsistent with any
36 statement of principle, guideline, protocol, or other nonbinding
37 policy representation regarding consumer arbitration made or
38 adopted by the private arbitration company. A private arbitration
39 company may not adopt any statement of principle, guideline,
40 protocol, or other nonbinding policy statement regarding

1 consumer arbitration that is inconsistent with the rules under
2 which consumer arbitration is actually conducted or administered
3 by the private arbitration company.

4 (e) A private arbitration company may not give or receive any
5 commission, rebate, or other remuneration for the referral of
6 consumer arbitration cases, prospective consumer arbitration
7 cases, consumer arbitration parties, or prospective consumer
8 arbitration parties.

9 (f) *This section applies to all consumer arbitration agreements*
10 *subject to this article, and to all consumer arbitration proceedings*
11 *conducted in California.*

12 SEC. 4. Section 1281.93 is added to the Code of Civil
13 Procedure, to read:

14 1281.93. (a) A private arbitration company may not
15 administer a consumer arbitration if, on or after January 1, 2003,
16 it has provided any paid or unpaid consulting, management, or
17 other business service or product to any party to the consumer
18 arbitration or to any attorney for a party in the arbitration, other
19 than arbitration, mediation, or other methods of resolving specific,
20 identified disputes. Nothing in this section prohibits a private
21 arbitration company from conducting training programs regarding
22 the arbitration *or mediation* process in general, provided that these
23 programs do not create the appearance of a potential conflict of
24 interest.

25 (b) Any arbitration award rendered in an arbitration
26 administered by a private arbitration company in violation of this
27 ~~section shall be vacated pursuant to Section 1286.2.~~ *section shall*
28 *be vacated at the request of the consumer party pursuant to Section*
29 *1286.2.*

30 (c) *This section applies to all consumer arbitration agreements*
31 *subject to this article, and to all consumer arbitration proceedings*
32 *conducted in California.*

33 SEC. 5. *The exclusion of self-regulatory organizations from*
34 *the definition of private arbitration company in Section 1280 of the*
35 *Code of Civil Procedure is not intended to affect the application*
36 *to SROs of the arbitrator ethics standards promulgated by the*
37 *Judicial Council pursuant to Section 1281.85 of the Code of Civil*
38 *Procedure, because this act does not relate to those issues. This act*
39 *may not be given retroactive effect with respect to the definitions*
40 *set forth in Section 1280 of the Code of Civil Procedure.*

1 *SEC. 6. The obligation under Section 1281.6 of the Code of*
2 *Civil Procedure to notify consumers of their rights in the*
3 *arbitration agreement shall become operative as to health care*
4 *service plans regulated by the Department of Managed Health*
5 *Care on January 1, 2004.*

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